



Sales and Use Tax Treatment of Bottled Water Changed

The department recently nonacquiesced in regard to the Wisconsin Tax Appeals Commission decision of *Artesian Water Company, Inc. vs. Wisconsin Department of Revenue*, which held that the sale of bottled artesian spring water was exempt from Wisconsin sales or use tax under sec. 77.54(20)(intro.), Wis. Stats. (1991-92). A summary of this decision appears on page 17 of this Bulletin.

The sales and use tax treatment of bottled water as a result of this decision is provided in the tax release titled "Bottled Water," which appears on page 25 of this Bulletin. □



Automatic 4-Month Extension Expires August 15

If your 1993 Wisconsin and federal individual income tax returns were due April 15, 1994, but you filed an application for an automatic 4-month extension for filing your federal return with the Internal Revenue Service (IRS), both your federal and Wisconsin returns are due August 15, 1994. When you file your Wisconsin return, be sure to attach to it a copy of the federal extension application, Form 4868.

Any filing extension available under federal law may be used for Wisconsin purposes, even if you are not using that extension of time to file your federal return. If you did not file a federal extension application but needed a 4-month extension for Wisconsin only, your 1993 Wisconsin return, ordinarily due April 15, 1994, must be filed by August 15, 1994. In this situation, you should attach a statement to the 1993 Wisconsin

return you file, indicating that you are filing under the federal automatic 4-month extension provision, or attach a copy of federal Form 4868 with only the name, address, and signature areas completed.

(Note: You are not required to pay your 1993 taxes by April 15, 1994, as a condition for receiving an extension of time to file your tax return. However, even though you may have an extension of time to file your return, you will owe interest of 1% per month on any tax not paid by April 15, 1994.) □



Federal Retirement Benefit Tax Claim Agreements

On April 5, 1994, the Attorney General's office, the Department of Revenue, and the law firm of O'Neil, Cannon & Hollman, S.C. representing approximately 14,000 individuals participating in the class action in *Wisconsin Department of Revenue v. Hogan, et al.*, reached an agreement in regard to the taxability of federal retirement benefits for those retirees who filed timely claims for refund for the 1984 through 1988 tax years.

The department reached a similar agreement on February 2, 1994, with approximately 3,200 refund claimants who were members of the Wisconsin Military Retirees' Alliance represented by Cook and Franke, S.C. The department also offered the same settlement to about 600 persons who were not part of the Military Alliance and who chose to opt-out of the class group.

The similarities of the above agreements are:

1. The only years for which payment can be made are 1984 through 1988.
2. The department will determine the timeliness, eligibility, and dollar

amount of each refund claim.

3. Timely, verified refund claims will be paid in six approximately equal installments.
4. Refunds of interest will be made before tax. Interest at the statutory rate of 9% per year will be paid on the unrefunded tax.
5. A timely refund claim for one year will constitute a timely refund claim for all subsequent tax years through 1988 unless a timely, written appeal was not made of any adverse determination by the department with respect to such refund claim.

Each eligible claimant has received a letter from the department explaining the agreement. The letter also requested that each individual complete a questionnaire and release or closing agreement, and attest that he or she was a member of or retired from the federal retirement system as of December 31, 1963. The questionnaire and release or closing agreement, and attestation must have been signed and returned to the department by the specified date in order for the claimant to receive the first installment payment by the date agreed to in the settlement.

For deceased claimants, the questionnaire and release or closing agreement and attestation may be completed by the personal representative of the estate or a beneficiary. Refunds for deceased claimants will be issued directly to the beneficiaries unless the personal representative requests in writing that the refund be paid to the estate. Each beneficiary must sign a release. Any inheritance or estate tax due as a result of including the tax refund, plus interest accrued to date of death, as an additional taxable asset of the deceased claimant's estate will be deducted from the refund.

Following is a summary and comparison of the three groups:

Wisconsin Tax Bulletin Annual Index Included

Once each year the *Wisconsin Tax Bulletin* includes an index of articles, tax releases, court cases, private letter rulings, and other materials that have appeared in past Bulletins. The index for issues 1 (October 1976) to 85 (January 1994) can be found on pages 37 to 61 of this Bulletin. □

Boiler Maker Gets Burned

A 38-year-old Prairie du Chien man, Roy O. Dobbs, has been sentenced to 18 months in jail for three counts of failure to file income tax returns for 1988, 1989, and 1990. Dobbs had been placed on probation in May 1993 and ordered to file the tax returns. He was jailed in December for violating the terms of his probation by failing to file the returns.

Dobbs, formerly of Kenosha, was found to have earned more than \$100,000 as a boiler maker in Milwaukee during 1988 to 1990, and he also received \$6,216 of unemployment compensation. Court records show that Dobbs owed the state approximately \$5,200 for the three years, and that he has not filed a state or federal income tax return since 1981.

A self-employed West Bend trucker, Roger R. Dahm, 49, was charged in Dane County Circuit Court in April 1994, with four counts of felony income tax evasion. Dahm was charged with filing fraudulent Wisconsin income tax returns for 1987, 1988, 1989, and 1990. The criminal complaint alleges that he intentionally understated his income by more than \$100,000 over those four years.

According to the complaint, during 1987 to 1990 Dahm operated a corporation that was engaged in grain

	Class Action	Military Retirees' Alliance	Opt-Outs
Notification letter, questionnaire, and release sent:	4-15-94	2-11-94	2-11-94
Request to be returned to department by:	5-15-94	3-15-94	2-28-94
Closing agreement sent:	—	—	After 3-1-94
Closing agreement returned to department by:	—	—	3-29-94
1st installment payment:	6-30-94	5-15-94	5-15-94
2nd installment payment:	11-15-94	11-15-94	11-15-94
3rd installment payment:	5-15-95	5-15-95	5-15-95
4th installment payment:	11-15-95	11-15-95	11-15-95
5th installment payment:	5-15-96	5-15-96	5-15-96
6th installment payment:	11-15-96	11-15-96	11-15-96

NOTE: The above dates apply to the majority of the claimants. However, the first installment payment for some individuals could be delayed for a number of reasons; for example, a second letter requesting additional information is required, a current address is unavailable, or there is a question as to whether the claimant is included in a certain group.

For members of the class action represented by the law firm of O'Neil, Cannon & Hollman, S.C., litigation will continue in regard to the following issues:

1. Certification of the class.
2. Untimely claims or appeals.
3. Payment of attorney fees.*
4. Interrupted federal service on or after December 31, 1963.

* The department will deduct 15% of the face amount of each refund check to be placed in a separate escrow account for payment of attorney fees, subject to further court order.

If you have any questions you may call the department's Central Audit unit at (608) 266-2441. You may also call Attorney Eugene Duffy at (414) 963-8568 if you are included in the class action suit. Members of the Wisconsin Military Retirees' Alliance group may call Mr. Joseph D'Amico at (414) 258-4341. □

Oconto County Adopts County Tax

Effective July 1, 1994, the county sales and use tax was adopted by Oconto County. This brings to 46 the number of counties that have adopted the ½% county tax. Adams County adopted the tax effective January 1, 1994, and Dodge County adopted the tax effective April 1, 1994.

The March 1994 *Sales and Use Tax Report*, a copy of which appears in *Wisconsin Tax Bulletin* 86 (April 1994), pages 33 and 34, includes a listing of the counties that have adopted the county tax. □

hauling. However, during an audit of Dahm's tax returns, it was discovered that he also operated a separate business making sales of grain. Dahm allegedly deposited money from these sales into separate bank accounts, hid this operation from his accountant, and failed to report any income from it. Dahm had apparently been operating this other business, without reporting income from it, for up to fourteen years, and he used profits from the operation to make investments, purchase a pole building, and pay other personal living expenses.

Dahm faces a maximum penalty of up to twenty years in prison and \$40,000 in fines, if convicted on all counts.

Attorney William A. Wentzel, 46, Nashotah, Wisconsin, was charged in April 1994 by the Waukesha County District Attorney's office, with two counts of failure to file Wisconsin income tax returns. The complaint alleges that Wentzel failed to file income tax returns for 10 consecutive years, including 1990 and 1991. Wentzel had gross income of \$44,723 in 1990 and \$13,550 in 1991.

If convicted on both counts, Wentzel faces a maximum penalty of eighteen months in jail and up to \$20,000 in fines. In addition to the criminal penalties, Wisconsin law provides for substantial civil penalties on the civil tax liability. Assessment and collection of the taxes, penalties, and interest due follows convictions for criminal violations.

Also in April 1994, an arrest warrant was issued for a Madison stockbroker, William C. Seitz, 47, because he failed to appear in Dane County Circuit Court to answer charges of failure to file income tax returns. He was charged by the Dane County District Attorney's office with three counts of failure to file Wisconsin income tax returns.

The complaint alleges that Seitz failed to file Wisconsin income tax returns for the years 1990, 1991, and 1992, when he had a combined gross income in those years of \$104,423. If convicted on all three counts, Seitz faces a maximum penalty of 27 months in jail and up to \$30,000 in fines. □

Question and Answer

Q We file our Wisconsin corporation franchise tax returns on a calendar year basis. We have received an extension until September 15, 1994, to file our 1993 federal corporation income tax return. We have heard that the Wisconsin law was changed to allow corporations that have received a federal extension an additional 30 days to file their Wisconsin returns. What do we have to do to request this additional 30-day extension?

A Since you have received a federal extension, you do not have to request a Wisconsin extension. You automatically have 30 days after the federal extended due date to file your Wisconsin return. Your 1993 Wisconsin return is due October 15, 1994. However, you must attach a copy of your federal extension to the Wisconsin return that you file. □



Need a Speaker?

Are you planning a monthly meeting or training program? The Wisconsin Department of Revenue provides speakers to business, community, and educational organizations.

Department representatives are available to speak on a variety of topics that can be targeted toward your group's particular areas of interest, including:

- New income and corporate tax laws.
- How sales tax affects contractors, landscapers, manufacturers, non-profit organizations, or businesses in general.
- What to expect in an audit.
- Common errors discovered in audits.
- Homestead credit.
- Farmland preservation credit.

To arrange for a speaker, please write to Wisconsin Department of Revenue, Speakers Bureau, P.O. Box 8933, Madison, WI 53708-8933, or call (608) 266-1911. □

Topical and Court Case Index Available

Are you looking for a convenient way to locate reference material so you can research a particular Wisconsin tax question? The *Wisconsin Topical and Court Case Index* will help you find reference material for use in researching your Wisconsin tax questions. This index references Wisconsin statutes, administrative rules, *Wisconsin Tax Bulletin* articles, tax releases, publications, Attorney General opinions, and court decisions.

The first part of the index, the "Topical Index," gives references to alphabetized subjects for the various taxes, including individual income, corporation franchise and income, withholding, sales and use, gift, inheritance and estate, cigarette, tobacco products, beer, intoxicating liquor and wine, and motor vehicle fuel, alternate fuel, and general aviation fuel.

The second part, the "Court Case Index," lists Wisconsin Tax Appeals Commission, Circuit Court, Court of Appeals, and Wisconsin Supreme Court decisions by alphabetized subjects for the various taxes.

If you need an easy way to research Wisconsin tax questions, consider subscribing to the *Wisconsin Topical and Court Case Index*. The annual cost is \$14, plus sales tax. The \$14 fee includes a volume published in December, and an addendum published in May.

To order your copy, complete the order blank that appears on page 63 of this Bulletin. The order blank may also be used for subscribing to the *Wisconsin Tax Bulletin* and for ordering the Wisconsin Administrative Code.

Tax Publications Available

The Department of Revenue publishes over 35 publications that are available, free of charge, to taxpayers or practitioners. To order any of the publications, write or call Wisconsin Department of Revenue, Shipping and Mailing Section, P.O. Box 8903, Madison, WI 53708-8903 (telephone (608) 266-1961).

Number Title of Publication

102 Wisconsin Tax Treatment of Tax-Option (S) Corporations and Their Shareholders

103	Reporting Capital Gains and Losses for Wisconsin by Individuals, Estates, Trusts	213	Travelers: Don't Forget About Use Tax
104	Wisconsin Taxation of Military Personnel	214	Do You Owe Wisconsin Use Tax? (Businesses)
109	Tax Information for Married Persons Filing Separate Returns and Persons Divorced	400	Wisconsin's Temporary Recycling Surcharge
111	How to Get a Private Letter Ruling From the Wisconsin Department of Revenue	500	Tax Guide for Wisconsin Political Organizations and Candidates
112	Wisconsin's Individual Estimated Tax and Corporation Estimated Tax Programs	501	Field Audit of Wisconsin Tax Returns
113	Federal and Wisconsin Income Tax Reporting Under the Marital Property Act	502	Directory of Free Publications
114	Wisconsin Taxpayer Bill of Rights	503	Wisconsin Farmland Preservation Credit
117	Guide to Wisconsin Information Returns	504	Directory for Wisconsin Department of Revenue
200	Sales and Use Tax Information for Electrical Contractors	505	A Taxpayer's Appeal Rights of an Office Audit Adjustment
201	Wisconsin State and County Sales and Use Tax Information	506	Taxpayers' Appeal Rights of Field Audit Adjustments
202	Sales and Use Tax Information: Motor Vehicle Sales, Leases and Repairs	507	How to Appeal to the Tax Appeals Commission
203	Sales and Use Tax Information for Manufacturers	508	Wisconsin Tax Requirements Relating to Nonresident Entertainers
205	Do You Owe Wisconsin Use Tax? (Individuals)	509	Filing Wage Statements and Information Returns on Magnetic Media
206	Sales Tax Exemption for Nonprofit Organizations	600	Wisconsin Taxation of Lottery Winnings
207	Sales and Use Tax Information for Contractors	601	Wisconsin Taxation of Pari-Mutuel Wager Winnings
210	Sales and Use Tax Treatment of Landscaping	700	Speakers Bureau presenting ...
211	Sales and Use Tax Information for Cemetery Monument Dealers	W-166	Wisconsin Employer's Withholding Tax Guide <input type="checkbox"/>
212	Businesses: Don't Forget About Use Tax		

Administrative Rules in Process

Listed below are proposed new administrative rules and changes to existing rules that are currently in the rule adoption process. The rules are shown at their stage in the process as of July 1, 1994, or at the stage in which action occurred during the

period from April 2, 1994, to July 1, 1994.

Each affected rule lists the rule number and name, and whether it is amended (A), repealed (R), repealed and recreated (R&R), or a new rule (NR).

Rules Sent to Revisor for Publication of Hearing Notice

- ch. 4 (title) MOTOR VEHICLE AND GENERAL AVIATION FUEL TAXATION-A
- 4.01 Portable motor equipment-A
- 4.02 Resellers' personal claims for refund-A
- 4.03 Public highways closed to public travel-A
- 4.04 No printing on back of original invoice-R
- 4.05 Taxicabs-A
- 4.10 Motor vehicle fuel tax liability-NR
- 4.11 Tax exemption for dyed diesel fuel-NR
- 4.12 Uncollected motor vehicle fuel taxes and repossessions-NR
- 4.50 Assignment, use and reporting of document number-A
- 4.51 Measuring withdrawals-A
- 4.52 Separate schedules-A
- 4.53 Certificate of authorization-A
- 4.54 Security requirements-A
- 4.55 Ownership and name changes-A
- 4.65 Motor vehicle fuel tax refunds to vendors and tax deductions for suppliers-NR
- 4.75 Payment of motor vehicle fuel tax-NR
- 11.04 Constructing buildings for exempt entities-A

Rules Adopted and in Effect (including date of adoption)

- 11.05 Governmental units-A (5/1/94)

- 11.19 Printed material exemptions-A (5/1/94)
- 11.34 Occasional sales exemption for sale of a business or business assets-A (5/1/94)
- 11.56 Printing industry-A (5/1/94)
- 11.61 Veterinarians and their suppliers-A (5/1/94)
- 11.68 Construction contractors-A (5/1/94)

Recently Adopted Rules Summarized

Listed below is a summary of recent revisions to administrative rules. In addition to the summary, substantive changes and new text are reproduced (examples and notes appearing in the rules are not reproduced here). In the amendments, material lined through (~~lined through~~) represents deleted text, and underscored (underscored) material represents new text.

This issue includes information about secs. Tax 11.05, 11.19, 11.34, 11.56, 11.61, and 11.68, all amended effective May 1, 1994, to reflect changes in the sales and use tax statutes made by 1993 Wis. Act 16.

Tax 11.05 Governmental units. Tax 11.05(title) is amended, to add a statutory reference; (2)(f) is amended, to add a cross reference for exempt copying charges; (2)(g), (3)(l), and (4)(c)(intro.), 1, and 2 are amended, to reflect proper language and style; and (3)(u) is created, to address the exemption for sales of animal identification tags and standard samples by the Department of Agriculture. The text of Tax 11.05(2)(f) and (3)(u) is as follows:

11.05(2)(f) Sales of maps, plat books, photocopies or other printed material, except as provided in sub. (3)(p).

(3)(u) Animal identification tags and standard samples representing product or commodity grades only when sold by the Wisconsin department

of agriculture, trade and consumer protection.

Tax 11.19 Printed material exemptions. Tax 11.19(title) is amended, to add a statutory reference; (2)(e) is amended, to clarify that sec. 77.51(13h), Wis. Stats. (1991-92), is a definition statute, not an exemption statute; (2)(f) is created, (5) is renumbered (6), and new (5) is created, to reflect statutory changes redefining storage and use with respect to raw materials used in printed materials; and (4)(b) is amended, to clarify that it applies to "printed advertising" materials. The text of Tax 11.19(2)(e), (2)(f), and new (5) is as follows:

11.19(2)(e) Section 77.51(13h), Stats., provides ~~an exemption for sales of printed material in Wisconsin by that~~ a foreign corporation that is a publisher of printed materials whose is not engaged in business in Wisconsin and is not required to register and collect Wisconsin sales or use tax if its only activities in Wisconsin are:

(2)(f) Section 77.51(18) and (22), Stats., provides that storage and use for purposes of imposing Wisconsin use tax does not include the keeping, retaining or exercising any right or power over raw materials for processing, fabricating or manufacturing into, attachment to or incorporation into printed materials to be transported outside Wisconsin and thereafter used solely outside Wisconsin.

(5) RAW MATERIALS INCORPORATED INTO PRINTED MATERIALS. Wisconsin use tax is not imposed on raw materials that would otherwise be subject to use tax under s. 77.53(1), Stats., purchased by a publisher or printer of printed materials if both of the following conditions are met:

(a) The raw materials are processed, fabricated or manufactured into, attached to or incorporated into printed materials.

(b) The resulting printed materials will be shipped outside Wisconsin for use solely outside Wisconsin.

Tax 11.34 Occasional sales exemption for sale of a business or business assets. Tax 11.34(2)(b)2 and 3 and (5)(c) are amended and (3)(b)3 is repealed, to reflect the removal of the 10-day requirement for the surrender of a seller's permit. The text of Tax 11.34(2)(b)2 and 3 and (5)(c) is as follows:

11.34(2)(b)2. A single transaction or series of transactions ~~at the time of~~ prior to termination of a business.

3. Piecemeal sales, whether part of a continuing business or ~~upon~~ prior to termination.

(5)(c) The fact that a business ceases operating and no longer conducts its day-to-day sales of tangible personal property or taxable services ~~shall may~~ not result in the automatic cancellation of a seller's permit. ~~If the permittee does not surrender the permit as provided in sub. (3)(b), the person shall not qualify for the occasional sale exemption until the permit is surrendered to the department for cancellation.~~

Tax 11.56 Printing industry. Tax 11.56 (title) is amended, to add a statutory reference; (3)(a), (3)(c), (5), and (6)(a)1 are amended, to reflect proper language and format; (6)(b)(intro.), 1, and 2 and (7)(b) are amended and (6)(b)3 is repealed, to clarify the department's position that a printer who sells printed materials to a customer who does not resell them meets the "destined for sale" requirement in sec. 77.54(2), Wis. Stats. (1991-92); and (6)(c) is created, to reflect statutory changes redefining storage and use with respect to raw materials used in printed materials. The text of Tax 11.56(6)(b)(intro.), 1, and 2, (6)(c), and (7)(b) is as follows:

11.56(6)(b)(intro.) The ~~exemptions~~ exemption under s. 77.54(2), Stats., described in par. (a)1 and 2, ~~apply~~ applies to property purchased by a person who does not use the property other than to provide it to a manufacturer described in par. (a) for use by the manufacturer in manufacturing tangible personal property to be sold.

The exemption under s. 77.54(2), Stats., does not apply if the manufactured tangible personal property is not to be sold by the manufacturer to its customer or by the customer. Examples of nontaxable purchases include:

1. A paper manufacturer's purchases of negatives which it transfers to a printer, who uses the negatives to produce printing ~~on the manufacturer's products which are to be sold which the printer sells to the paper manufacturer.~~

2. An advertising agency's purchases of color separations which are furnished to a commercial printer who uses the color separations to produce advertising material ~~the agency sells to a retailer printer sells to the advertising agency.~~

(6)(c) Wisconsin use tax is not imposed on raw materials that would otherwise be subject to use tax under s. 77.53(1), Stats., purchased by a publisher or printer of printed materials if both of the following conditions are met:

1. The raw materials are processed, fabricated or manufactured into, attached to or incorporated into printed materials.

2. The resulting printed materials will be shipped outside Wisconsin for use solely outside Wisconsin.

(7)(b) The tax applies to purchases of artwork, single color or multicolor separations, negatives, flats and similar items ~~if such those~~ purchases are used in the manufacture of tangible personal property not to be sold, other than items exempt under par. (a). A printer who does not supply paper used in printing tangible personal property is not selling tangible personal property but rather, is selling a service.

Tax 11.61 Veterinarians and their suppliers. Tax 11.61(title) is amended, to add a statutory reference; (1)(title) is amended to read "SALES BY VETERINARIANS" and (2)(title) is created to read "PURCHASES BY VETERINARIANS," to reflect proper format; (2)(a) is amended and (2)(b) is renumbered (2)(c) and amended, to reflect proper language, style, and format; (2)(b)1 is created, to improve format — it was previously

part of (2)(a); and (2)(b)2 is created, to reflect the creation of sec. 77.54(42), Wis. Stats. The text of Tax 11.61(2)(a) and (2)(b)1 and 2 is as follows:

11.61(2)(a) Sales to veterinarians of medicines for pets and sales of other tangible personal property to be used or furnished by them in the performance of their professional services to animals shall be subject to the sales or use tax, except as provided in par. (b)1. A veterinarian's purchases of medicines used on farm livestock, not including workstock, are exempt from tax.

(2)(b)1. Veterinarians' purchases of medicines used on farm livestock, not including workstock, are exempt from tax.

2. Veterinarians' purchases of animal identification tags from the Wisconsin department of agriculture, trade and consumer protection are exempt from tax. Purchases of animal identification tags from other suppliers which veterinarians provide to customers in performing professional services to animals are subject to tax.

Tax 11.68 Construction contractors. Tax 11.68(title) is amended, to add a statutory reference; and (3)(a) is amended, to reflect the repeal and recreation of sec. 77.53(1), Wis. Stats. The text of Tax 11.68(3)(a) is as follows:

11.68(3)(a) Under s. 77.51(2), Stats., contractors who perform real property construction activities are the consumers of building materials which they use in altering, repairing or improving real property. Therefore, suppliers' sales of building materials to contractors who incorporate the materials into real property in performing construction activities are subject to the tax. This includes raw materials purchased outside Wisconsin that are used by a contractor in manufacturing tangible personal property outside Wisconsin, or that are fabricated or altered outside Wisconsin by a contractor so as to become different or distinct items of tangible personal property from the constituent raw materials, and are subsequently stored, used or consumed in Wisconsin by that contractor. □